

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
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| In the Matter of |) | |
| |) | |
| Universal Service Reform |) | WT Docket No. 10-208 |
| |) | |
| Mobility Fund |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| A National Broadband Plan for Our Future |) | GN Docket No. 09-51 |
| |) | |
| High-Cost Universal Service Support |) | WC Docket No. 05-337 |
| |) | |

**Reply Comments of
NE Colorado Cellular, Inc. d/b/a Viaero Wireless**

Introduction and Summary

The Comments filed in response to the *Mobility Fund NPRM* confirm that reverse auctions are an unreasonable approach to distributing high-cost universal service (“USF” or “Fund”) support. The majority of parties agree that awarding support to a single winner after a single-round auction will only worsen concentration in the mobile broadband industry. Moreover, due to a combination of consolidation and state regulations regarding the designation of eligible telecommunications carriers (“ETCs”), an insufficient number of bidders are available to justify the Commission’s use of an auction mechanism. While AT&T, Verizon, and NCTA properly suggest that the Commission needs to learn more about support auctions before applying the concept to the Connect America Fund (“CAF”), they also fail to note that the Rural Utilities Service used a support auction to award \$1.85 billion of taxpayer funds in the second round of the Broadband Initiatives Program. If the USDA has already implemented such a similar

program—and it has—then regulators can examine the lessons learned from that experience without risking \$300 million of ratepayer funds on the proposed test-run.

I. Competitive Conditions in the Mobile Wireless Segment Prevent the Use of Support Auctions in the Mobility Fund

Viaero agrees with AT&T and Verizon (the “Dominant Carriers”) that universal access to communications services is “essential to promote economic growth, job creation, and public safety.”¹ We also agree that wireless technologies are often the most efficient approach to deploying broadband infrastructure in hard-to-reach areas, in the last mile and in the middle mile.² Despite the efficiencies involved in rural wireless deployments, however, the security and economic growth facilitated by universal access to broadband involves certain costs, and those costs must be balanced against the Commission’s broader policy objectives.³ Above all, mobile broadband subscribers should not suffer excessive fees or exceptionally high charges as a trade-off for universal access to 3G, especially those consumers living in rural areas who earn less than their urban counterparts.⁴

We diverge from the Dominant Carriers, however, in our assessment of how best to balance the public interest against the benefits of ubiquitous mobile broadband. To be sure, Viaero agrees that the Commission must use market-based mechanisms to encourage the deployment of

¹ AT&T at 1.

² See Verizon at 1; AT&T at 1. See also GRTI at 4.

³ Verizon at 8 n.6 (citing *Rural Cellular Ass’n*, 588 F.3d at 1102).

⁴ See Verizon at 4; United States Department of Agriculture Economic Research Service, *Rural Income, Poverty, and Welfare: Income and Nonfarm Earnings* (Sep.8, 2010), <http://is.gd/mVwYuF>.

broadband infrastructure in a competitively- and technologically-neutral manner.⁵ But the Commission must also safeguard consumers against the market failures that would necessarily follow from a single-winner support auction conducted in such a concentrated market.⁶ Even without the distortions of a support auction, the mobile wireless market now bears the following attributes:

- Seventy percent of rural Americans receive mobile broadband from just **two** carriers;⁷
- Just **two** carriers hold 78 percent of the sub-1GHz spectrum needed to affordably build out 3G, a percentage that is poised to increase;⁸ and
- **Two** dominant carriers use proprietary band classes, exclusive buying arrangements, and the Commission's own spectrum auctions to restrain competition and raise service prices.⁹

⁵ Verizon at 2. We note that, despite Verizon's insistence that they are disadvantaged competitively by the current high-cost Fund, Verizon and Sprint-Nextel both voluntarily relinquished their support to secure the Commission's approval of two separate mergers, and not as part of a rule-making of general effect.

⁶ US Cellular at 19 (citing Ex Parte Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 05-337 (Jan. 28, 2010), Enclosure, William P. Rogerson, "Problems with Using Reverse Auctions To Determine Universal Service Subsidies for Wireless Carriers," Jan. 14, 2010 (prepared for U.S. Cellular) ("Rogerson Paper") at 6-7 (emphasis in original).).

⁷ See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11,407, 11,574 (2010) (noting that, of the sub-1 GHz spectrum, Verizon and AT&T hold 78 percent of the licensed MHz-POPs in the combined cellular and 700 MHz bands).

⁸ See *id.* at 11428 (2010); *AT&T Will Buy More Spectrum*, NY TIMES, Dec. 21, 2010, at B8; Public Notice, New Cingular Wireless PCS, LLC and D&E Investments, Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Band Licenses (Jan. 5, 2011), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0105/DA-11-10A1.pdf.

⁹ See Comments of Rural Cellular Association filed in *Auction of 700 MHz Band Licenses Scheduled for July 19, 2011*; *Comments Sought on Competitive Bidding Procedures for Auction No. 92*, Public Notice, AU Docket No. 10-248 (Jan. 1, 2011); Brooke A. Masters, *Gabelli Settles FCC Auction Charges*, WASH. POST, July 14, 2006, at D01; Gregory Rose, *Spectrum Auction Breakdown: How Incumbents Manipulate FCC Auction Rules to Block Broadband Competition* 1-2 (New Am. Found. Working Paper No. 18, 2007),

As such, for the first time in years, the Commission recently failed to conclude that the mobile wireless market is effectively competitive.¹⁰ Given the concentration in the mobile wireless industry and the known effects of support auctions on competition,¹¹ it seems odd that the Commission would even consider distributing USF through a mechanism that would foster the development of monopoly service in many rural areas, precisely the problem that Congress designed the 96 Act to remedy.¹²

Viaero therefore echoes the sentiments of the rural local exchange carriers, who acknowledge that “[s]uch mechanisms could unfairly advantage larger bidders at the expense of small

http://www.newamerica.net/files/WorkingPaper18_FCCAuctionRules_Rose_FINAL.pdf.

¹⁰ See *14th Mobile Wireless Report* at ¶ 3.

¹¹ See, generally, Cellular South, et al. See also NTTA at 3 (noting that the Mobility Fund will favor incumbent wireless providers and perpetuate the deployment of low-quality networks in tribal areas.).

¹² See ATC at 4 (Single-winner reverse auctions “will prevent competition from ever developing in the areas that would be the most fertile for future expansion as technology and cost characteristics improve and economies of scale are achieved.”); Alaska Tel. Ass’n at 3 (“[I]f one entity was to receive a contribution to revenue unavailable to every other entity considering entry, customers in that area would be unlikely to enjoy *the benefits of competition*.”); CTIA at 7 (“the selection of a single winner will have an acute impact on the competitive environment and the choices available to consumers.”); Flow Mobile at 4-5 (the Mobility Fund “may perpetuate monopolization and thwart competitive entry for mobile broadband services in the United States.”); MTPCS at 2 (“[a] single carrier with government support could decimate the competition across a large region. The government should not essentially choose a winner and losers in the marketplace.”); MetroPCS Communications at 15 (“In many areas [the sole successful bidder’s] facilities may be the only wireless broadband facilities (and, perhaps, the only broadband facilities). As a result, the Commission should act to promote competition.”); RCA at 2 (“[A] single winner reverse auction essentially creates a government sanctioned and government funded monopoly in the relevant service area. Monopoly service will inevitably result in higher prices and/or reduced services – or it will require intensive government regulation to monitor service levels and pricing.”); RTG at 16 (“[R]everse auctions ... unfairly favor the largest carriers who have the economies of scale and scope to provide services below the actual cost in a rural area.”); Rural LEC Associations at 5; Sprint at 2 (“[C]hoosing a single carrier to receive Mobility Fund support in a given geographic area could well limit or even foreclose the possibility of competitive entry and expansion in those areas, and thereby deny consumers in those areas the benefits of competition.”); T-Mobile at 3 (“Awarding support exclusively to one provider in any given area, especially an area defined by the winning bidder, will allow incumbent carriers to create monopolies in unserved areas, diminishing competition and resulting in higher costs for consumers.”); USA Coalition at 11 (“[S]ubsidizing a single provider would prevent competition from ever developing in areas where support is necessary today.”); US Cellular at 19 (“A principal deficiency of the reverse auction model proposed by the Commission is that, while it attempts to lower the level of universal service subsidies, it would at the same time substantially reduce mobile broadband competition, as well as incentives for investment, in rural and high-cost markets.”). But see ITTA at 4.

companies seeking to create jobs and expand service throughout their rural service areas.”¹³ Moreover, “with only one provider per service area, customers would not have a choice between CDMA and GSM, nor would they necessarily be afforded the opportunity to connect with the world on their preferred device.”¹⁴ Indeed, in light of the practical effect of reverse auctions, the Ohio Commission suggested imposing market exit regulations on Mobility Fund recipients, in light of the fact that Mobility Fund recipients may find themselves serving as *de facto* carriers of last resort once competing carriers exit the market.¹⁵ In light of the acknowledged anti-competitive effects of support auctions, as well as the many legal impediments described below, the Commission should instead adjust its approach in favor of a neutral distribution mechanism that better safeguards competition.

II. The Commission Lacks the Authority to Allocate Support from the Fund to Mobile Broadband in the Proposed Manner

We agree with many of the commenters who questioned the Commission’s authority to auction support.¹⁶ In particular, we echo those parties who note that the Commission must formally conclude that broadband and 3G services meet the required standards of the 96 Act.¹⁷ We likewise wonder how growth in the high-cost Fund can be described by some as

¹³ Rural LEC Associations at 5.

¹⁴ Alaska Tel. Ass’n at 3.

¹⁵ Ohio Commission at 9.

¹⁶ See, e.g., Reply Comments of the Florida PSC at 3; Free Press at 2 (noting that § 254 requires that services be adopted by a “substantial majority” of consumers); MetroPCS at 4-5 (noting that the Commission lacks the authority to support information services with universal service funds); MTPCS at 9.

¹⁷ Reply Comments of Florida PSC at 3; Indiana Commission at 4; NASUCA at 2-3 (“The FCC’s legal authority to provide USF funding to mobility services, and especially mobility broadband services, is entirely dependent on making these findings, based on the record.”).

unsustainable even as the Commission holds aside reserves for special projects, increases the contribution factor, and engages in retro-active rulemaking.¹⁸ Further, we agree with those parties who note that even if the Commission designates 3G and broadband as supported services, a competitive bidding mechanism would “violate Section 254 because it does not ensure that any particular service provider will be funded.”¹⁹ Finally, we note with interest the Commission’s duty to encourage the participation of small businesses in spectrum auctions, as well as recent findings regarding the availability of broadband in America,²⁰ and wonder how such mandates can be squared with a Mobility Fund that increases barriers to infrastructure investment by reducing sources of capital now available to small businesses.²¹

Above all, however, we question how companies not formally designated as ETCs can receive distributions from the Mobility Fund.²² The success of any auction depends upon the

¹⁸ Alaska Tel. Ass’n at 3; MTPCS at 7 (“[R]emoving funding and lowering the pool ceilings not only would contravene the legally permissible use of such funds, as retroactive rulemaking aimed at already-allocated funds, but also would fail to sustain provision of basic services to high-cost area customers.”)(citing 47 U.S.C. § 254 (e)); Mid-Rivers at 4; NASUCA at 4 (“NASUCA also takes exception to the FCC’s limited action in this NPRM to divert between \$100 million to \$300 million of supposedly excess USF towards a purpose not currently authorized by its current rules.”); NTCH at 1-2.

¹⁹ See Verizon at 7; ACS at 9; Alaska Tel. Ass’n. at 2.; GVNW at 7; ITTA at 3-4; MTPCS at 2. See also US Cellular at 20 n.46 (noting that the “anti-competitive effects of reverse auctions make such a mechanism inconsistent with Sections 214 and 332 of the Act and Section 706 of the 1996 Act.”).

²⁰ *Id.* at 11 (citing § 706 of the 96 Act).

²¹ Blooston Rural Carriers at 5-6 (noting that the Commission must facilitate the participation of small businesses in the wireless industry as a requirement of § 309(j)). The Indiana Commission curiously advocates that the FCC should modify its spectrum auctions to facilitate license-holding by smaller providers while at the same time supporting reverse auctions that would decimate the ability of those same small providers to build any infrastructure that could make use of those licenses. Indiana Commission at 8.

²² 47 U.S.C. § 214 (e). We also question how the Commission can allocate support to specific census blocks when legacy rural locations define service areas in terms of wireline incumbents’ local exchange areas.

number of bidders that compete.²³ But as acknowledged by support auction proponents, the confluence of concentrated spectrum holdings, § 214 (e), and § 254 (e) will constrain the number of available bidders.²⁴ To be sure, expanded eligibility standards would increase the pool of potential bidders,²⁵ but those expanded standards would also remove state regulators from their role in designating ETCs.²⁶ That is, the Commission may only designate ETCs itself “in circumstances where a common carrier is providing telephone exchange service and exchange access and is not subject to the jurisdiction of a State commission, per Section 214(e) of the Act.”²⁷

As such, even if the Commission needs several wireless ETCs to participate in the Mobility Fund, license-holdings may present just two bidders with enough available spectrum available in a given location, and the 96 Act and state regulatory rules may restrict that number even further.²⁸ In states that designate multiple ETCs in rural areas, recipients of high-cost support

²³ See Ohio Commission at 10 (“For a reverse auction...to be successful, there must be multiple bidders.”).

²⁴ Compare AT&T at 6 (suggesting that requiring bidders to apply for ETC status would result in less competitive auctions) with Verizon at 22 (“Sections 214(e) and 254(e) of the Act may operate to limit the pool of eligible Mobility Fund recipients to ETCs, depending on how the Mobility Fund is ultimately structured and whether the Commission makes any attendant changes to other aspects of the USF program.”). See also MetroPCS at 11; NTCH at 6 (“Since the statute requires that USF recipients be ETCs, there is no way around this requirement.”); Sprint at 4.

²⁵ Compare AT&T at 6 with Verizon at 22.

²⁶ NASUCA at 6 (“[T]he exclusive use of a federal auction to distribute USF dollars to the states overlooks the joint role involving both the states and the federal regulators as laid out by Congress in the USF portions of the Act and emphasized by the Joint Board in its 2007 Recommended Decision.”).

²⁷ NTCH at 6.

²⁸ See CenturyLink at 8; ITTA at 15; Flow Mobile at 6; MTPCS at 3; Ohio Commission at 10.

from the Mobility Fund may also face delays in implementation as local regulators modify their local rules to account for federal requirements.²⁹

Even if the Commission allows self-certifying bidders to demonstrate their intention to obtain ETC status before participating in the Mobility Fund, such a result may “encourage waste, fraud, and abuse.”³⁰ After all, allowing multiple self-certifying bidders to compete in the support auctions before obtaining ETC status would not guaranty that the winning monopolist would suddenly accelerate build-out in high-cost areas.³¹ Indeed, the ink is not yet dry on the Commission’s proposed regulations, and some carriers are already seeking to undercut or slow deployments.³² One Dominant Carrier suggests that the Commission should be careful “not to over-condition awards[,]” and notes that “it is not practical to expect that coverage can be expanded to 100 percent of the unserved population, and in some areas only incremental gains may be realistic.”³³ Another Dominant Carrier hopes that the inability to provide coverage to a given customer due to propagation issues would not yield a forfeiture of support and that the Commission would allow more time for build-out.³⁴ In light of these positions, we agree with those parties who note that “[e]ven in pure ‘green field’ situations, reverse auctions are

²⁹ California Commission at 15; NTCH at 6.

³⁰ CenturyLink at 9.

³¹ US Cellular at 22; *but see* Indiana Commission at 7 (stating that the savings gained by supporting only a single provider will inevitably encourage build-out).

³² *See* Sprint at 6-7.

³³ Verizon at 3.

³⁴ *See* AT&T at 14 (“As the Commission establishes a coverage requirement for successful bidders, it should acknowledge these propagation issues and make clear that an inability to provide service to particular customers because of propagation considerations does not constitute a failure to comply with such a requirement.”); *id.* at 16.

susceptible to construction and equipment quality short-cuts and other gaming strategies that can result in deceptively low ‘winning bids.’”³⁵ We also agree with the Rural LEC Associations, who note that reverse auctions will encourage a race to the bottom in terms of service quality and sustainability, a result inconsistent with § 254.³⁶

III. Use of Coverage Maps from American Roamer is Unreasonable and Duplicative

While the Commission expresses concern about inefficient uses of public funds,³⁷ it has nonetheless proposed to duplicate a taxpayer-funded mapping initiative now underway at the NTIA.³⁸ With respect to the Commission’s proposed map, we agree with WCX, which notes that the static assessment of residential populations provided by the U.S. Census will not account for the mobility of non-residential populations that the Mobility Fund, by definition, should support.³⁹ Above all, however, we agree that relying upon advertised coverage to determine the state of 3G deployment in a given area, as proposed, will “grossly” overestimate existing coverage in rural America.⁴⁰ That is, erroneous American Roamer maps will infect Mobility Fund disbursements and perpetuate the continued suffering of local populations who lack effective coverage.⁴¹ Any mapping effort undertaken by the Commission must account for and

³⁵ Blooston Rural Carriers at 3; MTPCS at 4.

³⁶ Rural LEC Associations at 4.

³⁷ *Mobility Fund NPRM* at ¶ 5.

³⁸ *See* California Commission at 12.

³⁹ WCX at 8.

⁴⁰ *See id.* at 10; Flow Mobile at 5.

⁴¹ WCX at 10; Flow Mobile at 5.

build upon information collected under the auspices of the Broadband Data Improvement Act while also providing a correction mechanism, whether that mechanism involves input from states,⁴² local governments,⁴³ providers,⁴⁴ or the public.

IV. A Single-Winner Single-Round Support Auction has Been Completed by the Rural Utilities Service, with Mixed Results

Several parties, chief among them the Dominant Carriers, suggest that the Commission can use the Mobility Fund to figure out how support auctions might work in the CAF.⁴⁵ But due to the American Recovery and Reinvestment Act of 2009 (“Recovery Act”), those lessons can be learned without such an experiment. In the second round of the Broadband Initiatives Program (“BIP”), a \$2.7-billion version of the USDA’s Broadband Loan Program created by the Recovery Act, the Rural Utilities Service (“RUS”) conducted a modified reverse auction that allocated support for broadband deployment to carriers serving high-cost, rural areas.⁴⁶ Like the Mobility Fund, the BIP involved issues of bidder eligibility, service quality, technological

⁴² Indiana Commission at 5-6.

⁴³ WCX at 11.

⁴⁴ Indiana Commission at 6.

⁴⁵ See, e.g. Verizon at 2; NCTA at 7; *but see* CenturyLink at 5 (noting the greater complexity of issues raised by using support auctions in the CAF); GVNW at 6; Mid-Rivers at 5-6 (“The single-round reverse auction proposed in the NPRM for use in determining which entities will receive support from the Mobility Fund **is not a model that should be supported for the distribution of this funding or any future Universal Service programs.**”); ITTA at 6; Rural LEC Associations at 5-6 (“If the Commission moves forward with its proposal to find an appropriate funding mechanism for this one-time capital expenditure mobility build-out, it must not assume methods used to distribute proposed Mobility Fund amounts can be applied outside the context of the specific circumstances described in the *NPRM*.”).

⁴⁶ See RURAL DEVELOPMENT UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICE BROADBAND INITIATIVES PROGRAM ROUND TWO APPLICATION GUIDE 11-12, 36-42 (2010); Lennard G. Kruger, Broadband Loan and Grant Programs in the USDA’s Rural Utilities Service (Cong. Res. Serv. No. RL33816, Oct. 6, 2009).

neutrality, competitive neutrality, and anti-competitive effects.⁴⁷ Much like the Commission, the RUS sought to:

1. Identify areas eligible for funding;⁴⁸
2. Deploy support to eligible areas in a cost-effective manner;⁴⁹
3. Fund only financially and technically “feasible” implementations;⁵⁰
4. Restrict support to one provider per area;⁵¹
5. Award funds after a single round of competitive bidding without providing post-auction support to the winning applicant;⁵² and
6. Ensure that projects would be completed on an accelerated deployment schedule.⁵³

⁴⁷ Paul Dempsey, *Broadband Bureaucracy*, ENG. & TECH., Aug. 7, 2010, at 61. See also Daniel Sokol, *The European Mobile 3G UMTS Process: Lessons from Spectrum Auctions and Beauty Contests*, 6 VA. J.L. & TECH. 17, ¶ 39 (2001).

⁴⁸ Compare Notice of Funds Availability (NOFA) and Solicitation of Applications, 75 Fed. Reg. 3,820, 3,822 (Jan. 22, 2010) [hereinafter *Second BIP NOFA*] with *Mobility Fund NPRM* at ¶ 21; see also NTCH at 3.

⁴⁹ Compare *Second BIP NOFA* at 3,823 (“To effectively leverage Recovery Act broadband funds for last mile projects, RUS will limit Federal assistance to no more than \$10,000 per premises passed, unless a waiver is requested from the Administrator.”) with *Mobility Fund NPRM* at ¶ 1 (“The Mobility Fund would use market mechanisms ...to make one-time support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.”).

⁵⁰ Compare *Second BIP NOFA* at 3,828 (“Only projects that RUS determines to be financially feasible, and/or sustainable will be eligible for an award under this NOFA”) with *Mobility Fund NPRM* at ¶ 54 (“We also propose that each party seeking to receive support from the Mobility Fund be required to certify that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it seeks support.”).

⁵¹ Compare *Second BIP NOFA* at 3,827 (“RUS will not fund more than one project to serve any given geographic area.”) with *Mobility Fund NPRM* at ¶ 15 (“[W]e propose that only one entity in a given geographic area receive Mobility Fund support.”).

⁵² Compare *Second BIP NOFA* at 3,828 (“Award funds may be used... To fund the construction or improvement of all facilities required to provide broadband service[...]...Award funds may not be used...[t]o fund operating expenses of the Applicant[.]”) with *Mobility Fund NPRM* at ¶ 11 (“the Mobility Fund would make available non-recurring support to providers to deploy 3G or better networks”).

However, a “wide variability” existed in the “estimates, projections, and performance measures considered reasonable for a project.”⁵⁴

In the end, the BIP “effectively excluded” entire classes of competitors and technologies from meaningful participation in the program.⁵⁵ Despite technological neutrality mandates in the BIP’s enabling statute, incumbent favoritism and asymmetric bidding were built into the exercise from the very beginning through a combination of overt statutory preferences and implicit administrative bias.⁵⁶ Information asymmetries compounded pro-incumbent biases because the NTIA’s broadband mapping initiative could not be completed in time for the RUS to consider the data, and also because of overt misrepresentations from incumbent carriers regarding available speeds and services.⁵⁷ Today, though infrastructure deployment has barely begun, the RUS has experienced several enforcement challenges and even acknowledged that “given the large increase in its project portfolio from BIP, RUS’s capacity to actively monitor these projects

⁵³ Compare *Second BIP NOFA* at 3,826 with *Mobility Fund NPRM* at ¶ 39.

⁵⁴ See United States Government Accountability Office, *Recovery Act: Agencies Are Addressing Broadband Program Challenges, but Actions are Needed to Improve Implementation* 17 (Rep. No. GAO-10-80, 2009).

⁵⁵ Letter from Matthew M. Polka, President and CEO, Am. Cable Ass’n, to NTIA Sec’y Lawrence Strickling and RUS Administrator Jonathan Adelstein (Feb. 2, 2010), <http://www.americancable.org/node/1824>.

⁵⁶ 7 U.S.C. § 950bb (f) (“For purposes of determining whether to make a loan or loan guarantee for a project under this section, the Secretary shall use criteria that are technologically neutral.”); American Recovery and Reinvestment Act of 2009, Pub. Law 111-5, 123 Stat. 115 (2009), div. A, tit. I, 123 Stat. at 118 (“priority shall be given for project applications from borrowers or former borrowers under title II of the Rural Electrification Act of 1936 and for project applications that include such borrowers or former borrowers”); RURAL DEVELOPMENT UNITED STATES DEPARTMENT OF AGRICULTURE, *supra* note 46, at 11-12; Jonathan S. Adelstein, Remarks at the 30th Annual Local Government Conference of the National Association of Telecommunications Officers and Advisors (Oct. 1, 2010) (“The FCC and the administration are committed to keeping rural telcos from being driven out of business. The FCC has made clear to us they want to protect our portfolio. They don’t want to drive current providers under. So rest assured, we are working together to find ways to make this work for everyone.”).

⁵⁷ United States Government Accountability Office, *Recovery Act: Further Opportunities Exist to Strengthen Oversight of Broadband Stimulus Programs* 19-20, 22 (Rpt. No. GAO-10-823, Aug. 2010), available at <http://is.gd/gCJWE>.

after its BIP funding expires [in 2010] may be stressed.”⁵⁸ Most importantly, though the RUS allocated the bulk of its budgetary authority under the Recovery Act to comparably more expensive wireline projects.⁵⁹ In other words, the BIP doubled down on the mistakes of the traditional Broadband Loan Program, which has approved broadband loans for the highest-cost projects, on a cost-per-subscriber basis, paying amounts that “ranged as much as 15, 18, and 70 times as high as the lowest-cost project, even among projects using the same technology to deploy broadband.”⁶⁰ As such, to describe the proposed support auctions as “generally sound” is woefully inaccurate, given recent experiences with the paradigm.⁶¹

Conclusion

We agree that the Commission should adopt a “winner-takes-more” approach in which competitive ETCs only receive support when they win customers in the marketplace.⁶² But that approach should not involve a reverse auction that awards support on the basis of lowest per-unit

⁵⁸ USDA Office of Inspector General, USDA Investigation Developments, 2 (June 1, 2010), <http://www.usda.gov/oig/webdocs/INVPosting100601.pdf>; Joan Engebretson, *RUS Rescinds Stimulus Award to TierOne Converged Networks*, CONNECTED PLANET, Sep. 7, 2010, at <http://connectedplanetonline.com/independent/news/tierone-loses-stimulus-090710/>; United States Government Accountability Office, *Recovery Act: Preliminary Observations on the Implementation of Broadband Programs* 26 (Rep. No. GAO-10-192T, Oct. 27, 2009).

⁵⁹ U.S. Department of Agriculture Rural Development Rural Utilities Service, Broadband Initiatives Program Quarterly Program Status Report 5 (Dec. 27, 2010), *available at* http://www.rurdev.usda.gov/supportdocuments/BIPQuarterlyReport_12-10.pdf.

⁶⁰ See United States Government Accountability Office, *Recovery Act: Agencies Are Addressing Broadband Program Challenges, but Actions are Needed to Improve Implementation* 17 (Rep. No. GAO-10-80, 2009).

⁶¹ Verizon at 3.

⁶² CTIA at 8; MTPCS at 3. See also Verizon at 2 (noting that the National Broadband Plan recommended market-based mechanisms to determine support levels).

bids, a mechanism “which as structured is essentially a needless \$300 million check to the largest wireless carriers.”⁶³ The public would be better served by

[T]he Commission’s taking the actions necessary to reshape its universal service support mechanisms to advance broadband deployment and the provision of broadband Internet access services, and by managing the transition to these new mechanisms in a manner that supports continued deployment of mobile broadband infrastructure.⁶⁴

That is, the Commission should instead develop a properly-structured cost model that allows all parties to compete on a level playing field.⁶⁵ Support auctions, by contrast, will do little more than allow Dominant Carriers to color in the gaps in their advertised 3G coverage maps.⁶⁶

Respectfully submitted,

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January 18, 2011

⁶³ Free Press at 4; *see also* NTCH at 8 (comparing the Mobility Fund to broadband stimulus programs administered by the NTIA and the RUS).

⁶⁴ US Cellular at iii.

⁶⁵ US Cellular at 26.

⁶⁶ Blooston Rural Carriers at 7.

Appendix A

List of Commenters

NPRM Comments and Reply Comments⁶⁷

| Commenter(s) | Abbreviation |
|---|-------------------------|
| Alaska Communications Systems | ACS |
| Alaska Telephone Association | Alaska Tel. Ass'n |
| 3 Rivers Telephone Cooperative, Inc. Custer Telephone Cooperative, Inc. Harrisonville Telephone Company Hinton Telephone Co., Inc. Kennebec Communications LLC Midstate Communications, Inc. Northeast Louisiana Telephone Company Nucla-Naturita Telephone Company Penasco Valley Telephone Cooperative, Inc. Smithville Communications, Inc. Strata Networks Walnut Telephone Company, Inc. Wiggins Telephone Association | Blooston Rural Carriers |

⁶⁷ This Appendix lists the parties that submitted comments or reply comments relied upon in this document and the short forms by which they are cited. Except where otherwise noted (i.e. the Florida Commission), the footnotes above refer to the initial comments filed by the parties enumerated above, and not reply comments.

| | |
|---|------------------------|
| California Public Utilities Commission | California Commission |
| Commnet Wireless, LLC | Commnet |
| Florida Public Service Commission | Florida Commission |
| General Communication, Inc. | GCI |
| Gila River Telecommunications, Inc. | GRTI |
| GVNW Consulting, Inc. | GVNW |
| Indiana Utility Regulatory Commission | Indiana Commission |
| Independent Telephone & Telecommunications Alliance | ITTA |
| Mid-Rivers Telephone Cooperative, Inc. d/b/a Mid-Rivers Communications | Mid-Rivers |
| MTPCS, LLC d/b/a Cellular One | MTPCS |
| National Association of State Utility Consumer Advocates | NASUCA |
| National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; Eastern Rural Telecom Association; and Western Telecommunications Alliance | Rural LEC Associations |
| National Tribal Telecommunications | NTTA |

| | |
|---|-----------------|
| Association | |
| National Cable & Telecommunications Association | NCTA |
| New EA d/b/a Flow Mobile | Flow Mobile |
| NTCH, Inc. | NTCH |
| Public Utilities Commission of Ohio | Ohio Commission |
| United States Cellular Corporation | US Cellular |
| United States Telecom Association | USTA |
| Verizon and Verizon Wireless | Verizon |
| WorldCall Interconnect, Inc. | WCX |